

**Berliner Dep.**

**In The Matter Of:**

*AHERF v.  
PRICEWATERHOUSECOOPERS, LLP*

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**ROBERT BERLINER**

*February 16, 2005*

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**BERLINER, ROBERT - Vol. 1**



<p style="text-align: right;">Page 138</p> <p>1                   Robert Berliner      2 bad debt reserves at the DVOG hospitals at June      3 30, 1996 after the \$17-1/2 million adjustment,      4 is it not?</p> <p>5           A. Slightly less. The adjustment      6 would have brought the reserve to 68 million.</p> <p>7           Q. Have you performed any analysis of      8 whether some of the accounts that were written      9 off as part of this so-called \$80 million      10 write-off were impact collectible?</p> <p>11          A. Very little. If I recall 3 million      12 is the total number that got collected.</p> <p>13          Q. That's the amount that was in fact      14 subsequently collected, right?</p> <p>15          A. Yes.</p> <p>16          Q. I was asking a slightly different      17 question which is, did you perform an analysis      18 as to the amount that was collectible at the      19 time of the write-off if AHERF management had      20 tried?</p> <p>21          A. I did not do that, but it's my      22 understanding that the outsourcer of that who      23 was assigned the job of collecting the old      24 accounts had pretty much given up and it was      25 unlikely that further efforts would have been</p>	<p style="text-align: right;">Page 140</p> <p>1                   Robert Berliner      2           Q. Do you know whether Mr. Cancelmi or      3 anyone else at AHERF provided a copy of that      4 memo to Coopers &amp; Lybrand?</p> <p>5           A. I doubt that it was provided to      6 Coopers &amp; Lybrand, but I don't know for certain.</p> <p>7           Q. Why is it that you doubt that?</p> <p>8           A. Because it's not necessarily common      9 that internal correspondence is provided to the      10 auditors.</p> <p>11          Q. We discussed before that September      12 11, 1996 was the last date of substantial field      13 work for the 1996 audits, right?</p> <p>14          A. Yes.</p> <p>15          Q. Is it your understanding though      16 that at this time, as of September 24, 1996, the      17 audit report had not yet been released?</p> <p>18          A. I believe that's correct.</p> <p>19          Q. It is possible, is it not sir, that      20 if Coopers &amp; Lybrand had received a copy of this      21 memo at that time or had otherwise learned that      22 AHERF financial was about to embark on a      23 write-off of about \$80 million on accounts      24 receivable that they might have taken some      25 actions in response to that, right?</p>
<p style="text-align: right;">Page 139</p> <p>1                   Robert Berliner      2 successful or cost effective.</p> <p>3           Q. What is the basis for that      4 understanding that you just expressed?</p> <p>5           A. Well, they have been at it for a      6 while and there comes a point where any further      7 efforts are unlikely to be successful and that      8 the amount of future success that would be      9 achieved would not be commensurate with the cost      10 of paying the outsourcer to achieve them. So      11 you would be losing money by collecting more      12 accounts rather than gaining money.</p> <p>13          Q. A question that I meant to ask you      14 earlier today and I think I forgot to and I'm      15 going to ask you now is do you consider yourself      16 to be an expert sir in hospital billings or      17 collections?</p> <p>18          MR. JONES: Object to form.</p> <p>19          A. No, I don't.</p> <p>20          Q. Could you turn to page 3-1 of your      21 report. You refer there right in the first      22 sentence of part 3 of your report to a      23 memorandum from Mr. Cancelmi to Mr. Spargo dated      24 September 24, 1996, is that right?</p> <p>25          A. Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1                   Robert Berliner      2           A. That's true, but I have to add that      3 your question touches on the principal      4 difference that I have with Mr. Tillett, because      5 I think in his report Mr. Tillett misconstrues      6 the responsibility of auditors in conducting a      7 GAAS audit. Auditors just can't sit and wait      8 for management to provide them with every bit of      9 information, auditors have an affirmative      10 responsibility to obtain sufficient competent      11 evidential matter on which to form their      12 opinion, and therefore the facts and      13 circumstances pertaining to the receivables at      14 DVOG were available to Coopers &amp; Lybrand in my      15 opinion had they sought out the appropriate      16 people at AHERF and asked the appropriate      17 questions of those people.</p> <p>18          Q. The fact that AHERF management had      19 formed the intent to do a write-off is not      20 something that would be available to Coopers &amp;      21 Lybrand auditors other than being informed of      22 such by AHERF management, isn't that right?</p> <p>23          MR. JONES: Object to form.</p> <p>24          A. No, I don't necessarily agree with      25 that. I'm not by any means suggesting that</p>

<p style="text-align: right;">Page 142</p> <p>1                    Robert Berliner      2 AHERF management was totally above board and      3 totally forthcoming with Coopers by no means,      4 but I think it comes down to what is required of      5 an auditor, what's an audit all about. I      6 believe based upon my experience and my      7 understanding of GAAS, that an auditor has an      8 affirmative responsibility to seek out the facts      9 and circumstances from those people in the      10 client's organization in the best position to      11 know those facts and circumstances.</p> <p>12                  I have to believe, given the aging      13 of the DVOG accounts, that it would be      14 incompetence on the part of Coopers not to      15 perform the sufficient inquiry and other      16 procedures to raise the question of isn't it      17 appropriate to write-off some of these accounts,      18 they are so old you're not going to collect      19 them, and get out of the various people in      20 management the story and possibly the very      21 intent of doing the write-off.</p> <p>22                  Q. If I could ask you to jump ahead      23 for a moment to page 18-2 of your report. Do      24 you see that you set forth there in the middle      25 of the page rule 102 of the ethics code to which</p>	<p style="text-align: right;">Page 144</p> <p>1                    Robert Berliner      2 the case that I've read as to whether or not the      3 additional Graduate transfers above the 50      4 million, the 49 million were conveyed to Coopers      5 by AHERF people or not conveyed. Whether they      6 were or not in my opinion is somewhat irrelevant      7 because the real question is even if they      8 weren't conveyed would the performance of a GAAS      9 audit have detected the transfer of the      10 additional reserves, in my opinion they would      11 have.</p> <p>12                  The auditor has a responsibility      13 under GAAS to plan his audit to detect errors      14 and irregularities. The mere fact that an      15 accounting error is intentional doesn't relieve      16 the auditor of any responsibility for failing to      17 detect it. If the auditor applies appropriate      18 auditing procedures they are not guaranteed by      19 any means to detect intentional errors but they      20 should ferret out material errors, whether they      21 be intentional or unintentional, if they are      22 properly employed.</p> <p>23                  Q. I'm trying to ask you about      24 something a little bit different though, let me      25 try to ask it this way. Do you agree with me</p>
<p style="text-align: right;">Page 143</p> <p>1                    Robert Berliner      2 members of the AICPA are required to adhere, is      3 that right?</p> <p>4                  A. Yes, sir.</p> <p>5                  Q. That rule reads as follows "In the      6 performance of any professional service, a      7 member shall maintain objectivity and integrity,      8 shall be free of conflicts of interest and shall      9 not knowingly misrepresent fact or subordinate      10 his or her judgment to others", did I read that      11 right?</p> <p>12                  A. Yes, you did.</p> <p>13                  Q. Will you agree with me that members      14 of AHERF management did not comply with this      15 rule of ethics in their dealings with Coopers &amp;      16 Lybrand?</p> <p>17                  MR. JONES: Object to form and      18 foundation.</p> <p>19                  A. First of all this rule would only      20 apply to those CPAs in AHERF's employ who were      21 members of the AICPA. The question is whether      22 they misrepresented facts to Coopers &amp; Lybrand      23 or were merely not forthcoming in divulging what      24 a good financial management would divulge to its      25 auditors. There is a dispute in the evidence in</p>	<p style="text-align: right;">Page 145</p> <p>1                    Robert Berliner      2 that members of AHERF management were not      3 forthcoming in their dealings with Coopers &amp;      4 Lybrand in the course of the audits?</p> <p>5                  MR. JONES: Object to form.</p> <p>6                  A. I would say so.</p> <p>7                  Q. Do you agree with me that members      8 of AHERF failed to provide Coopers &amp; Lybrand      9 with information that they should have provided      10 Coopers &amp; Lybrand with?</p> <p>11                  MR. JONES: Same objection.</p> <p>12                  A. What information are you referring      13 to?</p> <p>14                  Q. I'm asking you for your view. My      15 question is, is it your view that members of      16 AHERF management failed to provide Coopers &amp;      17 Lybrand with information that they should have      18 provided Coopers &amp; Lybrand with?</p> <p>19                  MR. JONES: Same objection.</p> <p>20                  A. In my years of auditing I      21 encountered all kinds of management, it ran the      22 gamut from those who had presented to me on a      23 silver platter to others who were not      24 forthcoming and wouldn't tell me a thing, I had      25 to find out everything on my own. Depending</p>

<p style="text-align: right;">Page 146</p> <p>1                   Robert Berliner      2 upon the differences in management the auditor      3 modifies his auditing procedures to deal with      4 those differences. I've read testimony that      5 would contradict that fact that they were not      6 forthcoming. Different AHERF people testified      7 that they would have been available to provide      8 information to Coopers had Coopers asked. In      9 the area of the Lockhart Trusts I think a fellow      10 by the name of Zwirn, if I got the name      11 correctly, testified that he kept all of the      12 agreements, trust agreements in a book and they      13 were available had Coopers asked to see them.      14 There's conflicting testimony along those lines.</p> <p>15                  A clearly complicating factor is      16 the fact that some of these people were former      17 Coopers auditors. Cancelmi was a well respected      18 audit manager at Coopers who had a relationship      19 with Buettner and Kirstein and Laing I believe      20 was also an audit manager at Coopers. Do I      21 believe that these people should have been more      22 forthcoming, Laing and Cancelmi in dealing with      23 Coopers yes, I do, I think they should have been      24 more forthcoming. Did they lie, I can't say      25 that they lied, I got conflicting evidence.</p>	<p style="text-align: right;">Page 148</p> <p>1                   Robert Berliner      2 you have to do, do it. So I went and I found      3 information that totally contradicted what I was      4 told by the CEO of that public company. The end      5 result the board fired the CEO, the financial      6 statements were restated and I gave a clean      7 opinion on the restated financial statement.      8 They were never issued, the corrected financial      9 statements.</p> <p>10                 So I believe in that instance I did      11 what GAAS required me to do, evaluate the -- ask      12 the inquiries of the appropriate people,      13 evaluate the responses, shoot them up the flag      14 pole, see if they fly and if they don't, perform      15 extended procedures and I think that's what      16 should have been done in the Cooper's audit.</p> <p>17                 Q. Can you tell me what the name was      18 of that company?</p> <p>19                 A. The name of that company?</p> <p>20                 Q. Yes.</p> <p>21                 A. It was called American Beverage,      22 they made the Hoffman line of beverages which to      23 New Yorkers was a famous brand and also Dr.      24 Brown's which is still around, it's sold in all      25 of the kosher delicatessens in the city and they</p>
<p style="text-align: right;">Page 147</p> <p>1                   Robert Berliner      2 Whether they did or not, whether they should      3 have been more forthcoming or not, I believe the      4 documentation available to Coopers was such that      5 had Coopers performed a GAAS audit they would      6 have gotten to the right answer, and so I      7 believe it was because of the failures to comply      8 with GAAS that Coopers failed to detect all of      9 the misstatements that were made of AHERF      10 financial statements.</p> <p>11                 Q. Back when you were auditing you      12 would have expected your clients to be more      13 forthcoming with you than Dan Cancelmi and      14 others were with Coopers &amp; Lybrand, correct?</p> <p>15                 A. I had clients who were less      16 forthcoming. I can recall vividly a situation      17 where the CEO of a public company made a      18 representation to me that didn't pass my      19 personal smell test and I said to him I just      20 need more. I hear what you're saying but that's      21 not good enough for me, I need more. He said      22 well what do you need, I said I have to go out      23 to Los Angeles and I have to go to this company      24 you acquired and I have to go and look at some      25 information there. He says okay, if that's what</p>	<p style="text-align: right;">Page 149</p> <p>1                   Robert Berliner      2 had many other brands.</p> <p>3                 Q. Have you ever had in your career      4 any other experience like the one that you      5 described at American Beverage?</p> <p>6                 A. Yes, I did.</p> <p>7                 Q. What was that experience?</p> <p>8                 A. It was with a company called      9 Nickelberry that had been a long-standing client      10 of our Chicago office where there was a      11 management change and the company relocated to      12 New York. The company took a position that they      13 had made a decision to dispose of a line of      14 business during the year and therefore in the      15 financial statements they wanted to release they      16 categorized the operations of this line of      17 business as a discontinued operation.</p> <p>18                 I'll never forget the situation, we      19 were working lengthy hours and one night about      20 8:30 I asked my team, I was the partner and I      21 asked my team look, I've got to leave now, is      22 there anything I can read on the train and the      23 answer was well, why don't you take the minutes      24 of the board of directors. So I took the      25 minutes of the board of directors meetings and</p>

<p>1                    Robert Berliner</p> <p>2        A. Yes.</p> <p>3        Q. In this letter Ms. Robinson on</p> <p>4 behalf of Mellon Bank takes the view that the</p> <p>5 language for several of the Lockhart trust</p> <p>6 agreements is quite explicit for capital gains?</p> <p>7        A. Four out of five.</p> <p>8        Q. The point she's making is that they</p> <p>9 are explicit in her review that capital gains</p> <p>10 become part of the corpus and therefore are</p> <p>11 restricted, right?</p> <p>12      A. Yes. The fifth one is really very</p> <p>13 immaterial to the five, this is by far the</p> <p>14 smallest in dollar amount.</p> <p>15      Q. Is it your understanding that AHERF</p> <p>16 management did not provide this document to</p> <p>17 Coopers &amp; Lybrand in connection with either the</p> <p>18 1996 or 1997 audits?</p> <p>19      A. That's my understanding.</p> <p>20      Q. Is this another example of</p> <p>21 something where you would have expected in AHERF</p> <p>22 management to be above board and to have</p> <p>23 provided the document?</p> <p>24      MR. JONES: Object to form.</p> <p>25      A. Yes.</p>	<p>Page 206</p> <p>1                    Robert Berliner</p> <p>2 maintained copies of its endowment agreements in</p> <p>3 three-ring binders?</p> <p>4        A. That's my understanding.</p> <p>5        Q. Three-ring binders from which one</p> <p>6 could remove individual pages, potentially,</p> <p>7 right?</p> <p>8        A. Yes.</p> <p>9        Q. Do you know what pages of the</p> <p>10 Lockhart trust agreements were contained in</p> <p>11 those three-ring binders when they were provided</p> <p>12 to Coopers &amp; Lybrand auditors?</p> <p>13      A. I do not.</p> <p>14      Q. Do you know whether the provision</p> <p>15 of the letter from Mellon Bank that has been</p> <p>16 marked as Exhibit 20 would have made any</p> <p>17 difference to the report that Coopers &amp; Lybrand</p> <p>18 issued?</p> <p>19      MR. JONES: Object to foundation.</p> <p>20      A. All I can tell you is I read the</p> <p>21 deposition testimony of Ben Corbley and Mel Hope</p> <p>22 and Sepelia and Staldard and they were part of</p> <p>23 the '98 restatement team and it certainly made a</p> <p>24 difference to them, so I think the answer is</p> <p>25 yes. I think this is another one of the areas</p>
<p>Page 207</p> <p>1                    Robert Berliner</p> <p>2        Q. Have you seen before this note here</p> <p>3 that Mr. Spargo has written on the memo which</p> <p>4 reads "Al and Dan, this little pickle may</p> <p>5 require a tad bit more creativity than even we</p> <p>6 are normally accustomed to, perhaps we can</p> <p>7 discuss at our next weekly meeting. Thanks,</p> <p>8 Steve"?</p> <p>9        A. Yes.</p> <p>10      Q. Do you have a reaction to that</p> <p>11 note?</p> <p>12      MR. JONES: Object to form.</p> <p>13      A. Yes, my reaction to that note is</p> <p>14 that Mr. Spargo is essentially saying that it</p> <p>15 would be tough to explain this thing.</p> <p>16      Q. It indicates to you, doesn't it,</p> <p>17 that AHERF management knew that what they were</p> <p>18 doing was wrong?</p> <p>19      MR. JONES: Object to form,</p> <p>20 foundation.</p> <p>21      A. That would suggest that.</p> <p>22      Q. And yet they didn't tell their</p> <p>23 auditors?</p> <p>24      A. That's my understanding.</p> <p>25      Q. Is it your understanding that AHERF</p>	<p>Page 209</p> <p>1                    Robert Berliner</p> <p>2 that really illustrates my view and I didn't</p> <p>3 comment on it earlier and that is that I think</p> <p>4 even with whatever subterfuge was carried on</p> <p>5 here on the part of AHERF management, the</p> <p>6 accounting misstatements should have been</p> <p>7 detected by the auditors. I have two principal</p> <p>8 reasons for that, one is an understanding of</p> <p>9 what 116 and 117 did to change GAAP and it's</p> <p>10 pretty simple.</p> <p>11      Generally speaking there were two</p> <p>12 categories heretofore, restricted and</p> <p>13 unrestricted, and what these statements did was</p> <p>14 to pretty much leave the unrestricted unchanged</p> <p>15 but to break out a restricted into temporarily</p> <p>16 restricted and primarily restricted. Now, we</p> <p>17 begin the year with the ending year '95 balances</p> <p>18 where there's a huge number in restricted and a</p> <p>19 relatively small number in unrestricted. What</p> <p>20 does that mean, well, again we said earlier that</p> <p>21 one of the things the auditors should do in</p> <p>22 conducting an audit is to have an understanding</p> <p>23 of the client, the business, so on and so forth.</p> <p>24      So after many years of conducting</p> <p>25 these audits of the AHERF system it would seem</p>

<p>1                   Robert Berliner      2 to me that it would only be reasonable to expect      3 Coopers &amp; Lybrand to have an understanding that      4 these Lockhart trusts go back many, many years      5 to the '20s and '30s and so forth and that the      6 original grants grew over time because of      7 unrealized gains to become big dollar amounts.      8                 Now, if they are restricted at the      9 end of '95 what is it that happened that would      10 make them temporarily restricted in '96, it      11 would have to be something. Why would they be      12 temporarily restricted and remain temporarily      13 restricted for all these many, many years.      14 Temporarily restricted is a category that refers      15 to restrictions that will lapse with the      16 performance of certain acts or with the passage      17 of time. Well clearly here they didn't lapse      18 with the passage of time, they were restricted      19 for 50 years.      20                 So the odds on would be that the      21 auditors would have an expectation that they      22 would be permanently restricted and not      23 temporarily restricted, which would lead I think      24 to a higher level of skepticism when they see      25 the client putting the bulk of the money into</p>	<p>Page 210</p> <p>1                   Robert Berliner      2 expiration of restrictions prospectively?      3                 MR. JONES: Object to form.      4                 A. What does it mean prospectively, I      5 don't quite understand.      6                 Q. That is you don't have to go back      7 and see whether the expirations expired between      8 the time of contribution and the time of      9 adoption of FAS 116 and 117. That you can start      10 from the time of adoption in terms of whether      11 the restrictions have expired or not?      12                 A. Yes.      13                 Q. So therefore with respect to the      14 Lockhart trusts, that's why the expiration from      15 restrictions were occurring in fiscal years 1996      16 and 1997 without regard to whether those same      17 restrictions would have expired in the 1920s and      18 '30s and '40s and '50s if FAS 116 and 117 had      19 been effected so many years ago, right?      20                 MR. JONES: Objection to form and      21 foundation?      22                 A. We're not talking about them      23 expiring, we are talking about them still be      24 temporarily restricted as of the beginning of      25 '96. They took them from temporarily restricted</p>
<p>1                   Robert Berliner      2 the temporarily restricted, that's the first      3 point.      4                 The second point which is maybe      5 even more powerful is the fact that how come if      6 they were temporarily restricted the Mellon Bank      7 as the trustee was not passing the money on to      8 AHERF for AHERF to use in its operations. I      9 think you have those two factors there that are      10 very, very significant and certainly require the      11 auditor to recognize that uh oh, I'm in a high      12 risk area here, this thing doesn't smell so      13 good, I have to do some extended procedures and      14 that's where I come back to the first point of      15 getting ahold of the trustee and asking the      16 trustee for an interpretation.      17                 Had they done that they would have      18 gotten an interpretation which made this letter      19 moot, because even though the client was trying      20 to keep this from them they would have found it      21 out on their own by performing what would only      22 be considered to be appropriate auditing      23 procedures under the circumstances.      24                 Q. Are you aware of the fact that FAS      25 116 and 117 permits the recognition of the</p>	<p>Page 211</p> <p>1                   Robert Berliner      2 to unrestricted in '96 and 97. It's not that      3 they classified them as unrestricted at the      4 beginning of '96, so I don't quite understand      5 how that facet of 116 and 117 are meaningful to      6 the discussion we've been having.      7                 Q. If I understand the point you are      8 making, you don't understand how it could be      9 that the capital gains are the funds that for      10 many years have been classified as restricted,      11 now all of a sudden after the adoption of FAS      12 116 and 117 were going to be classified as      13 temporarily restricted, right?      14                 A. Yes.      15                 Q. Let me ask you a question about the      16 iron curtain method of preparing the summary of      17 un-adjusted differences, is that a term with      18 which you are familiar?      19                 A. Yes.      20                 Q. Do you agree with me that the iron      21 curtain method is an acceptable method under      22 GAAS for aggregating audit differences and      23 evaluating their impact on the financial      24 statements year to year?      25                 MR. JONES: Objection to form.</p>

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1                   Robert Berliner  
 2       A. I ran into this situation when I  
 3 was chairing the task force on risk and  
 4 materiality, we tried mightily to resolve that  
 5 by providing guidance and there was a divergence  
 6 of views among the accounting firms and we  
 7 couldn't resolve it, and we essentially copped  
 8 out by putting a footnote that I drafted into  
 9 the statement that said that that's essentially  
 10 an accounting matter and it's a matter for the  
 11 FASB to deal with, not the Auditing Standards  
 12 Board, so we left it unresolved.

13                  However, when you read the bulk of  
 14 SAS 47 it leads you away from that method.  
 15 Admittedly it's not the clearest thing in the  
 16 world because we couldn't make it the clearest  
 17 thing in the world. We have here a multitude of  
 18 adjustments and I think you have to consider  
 19 them in their entirety. So while I was aware of  
 20 Coopers' preference for the iron curtain method,  
 21 I found many more misstatements than Coopers  
 22 detected. So my misstatements when taken in the  
 23 aggregate were so material to the prior years  
 24 that they demanded in my opinion prior period  
 25 treatment.

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1                   Robert Berliner  
 2       Q. I understand that that is your view  
 3 and you've expressed that in your reports, I'm  
 4 attempting to ask you much more basic questions  
 5 first. Do you agree with me that both the iron  
 6 curtain method and the rollover method of  
 7 preparing the SUD are permissible methods under  
 8 SAS 47?

9       A. Yes.

10      Q. Am I right that you personally  
 11 apparently prefer the rollover method?

12      A. Yes.

13      Q. Is that perhaps because the Arthur  
 14 Young firm at which you started out used the  
 15 rollover method?

16      A. Yes.

17      Q. You've known for many years now  
 18 that the Coopers & Lybrand firm had a preference  
 19 for the iron curtain method, right?

20      A. Yes.

21      Q. Is it your understanding that the  
 22 audit engagement team for the AHERF audits  
 23 applied the iron curtain method consistently  
 24 from year to year?

25      A. Yes.

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1                   Robert Berliner  
 2       Q. Would you agree with me that that's  
 3 the most important method that you apply  
 4 consistently from year to year and not switch  
 5 methods from year to year?

6       A. Yes.

7       Q. One of the accounting issues that  
 8 you raise in your report has to do with an  
 9 equity interest that AHERF had in an enterprise  
 10 called Health Partners, right?

11      A. That's correct.

12      Q. There was an error in AHERF's  
 13 accounting treatment for that that Coopers &  
 14 Lybrand detected in the course of its fiscal  
 15 year 1995 audit, right?

16      A. That's correct.

17      Q. Coopers & Lybrand posted that error  
 18 to the fiscal year 1995 SUD and determined that  
 19 it was immaterial, right?

20      A. Yes.

21      Q. AHERF corrected the error in the  
 22 following year, fiscal year 1996, right?

23      A. Yes.

24      Q. Is it the case then that under the  
 25 iron curtain approach to the SUD, Coopers &

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1                   Robert Berliner  
 2       Lybrand properly did not need to make an SUD  
 3 entry in fiscal year 1996?

4       A. Correct.

5       Q. So do you agree that the way  
 6 Coopers & Lybrand handled the Health Partners  
 7 equity investment was appropriate?

8       A. Under the iron curtain method, yes.

9       MR. JONES: Object to form.

10      Q. Let me ask now about capitalized  
 11 interest. Is it your understanding that in  
 12 fiscal year 1995 and prior years AHERF did not  
 13 capitalize interest?

14      A. Right.

15      Q. Is it your understanding that GAAP  
 16 states that interest on construction and  
 17 process, if material, ought to be capitalized?

18      A. Yes.

19      Q. Coopers & Lybrand in the course of  
 20 its 1995 audit detected the fact that AHERF had  
 21 not capitalized interest, right?

22      A. Yes.

23      Q. Coopers & Lybrand posted an entry  
 24 for instance to the AGH SUD, right?

25      A. Right.

1 ERRATA

2 I, Robert Berliner, wish to make the  
3 following changes, for the following reasons:

4 PAGE LINE

5 CHANGE:

6 REASON:

7 CHANGE:

8 REASON:

9 CHANGE:

10 REASON: *See attached*

11 CHANGE:

12 REASON:

13 CHANGE:

14 REASON:

15 CHANGE:

16 REASON:

17

18

*Robert W. Berlin*  
ROBERT BERLINER

19

20

21

22 Subscribed and sworn to before me

23 this 16 day of March 2005.

24

25 *Bette Heiman*  
Notary Public

BETTE HEIMAN  
NOTARY PUBLIC, State of New York  
No. 31-6833970  
Qualified in New York County  
Commission Expires March 30, 2006

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF ALLEGHENY HEALTH, EDUCATION AND RESEARCH FOUNDATION  
vs  
PRICEWATERHOUSECOOPERS, LLP**

Civil Action Case No. 00-684 (W.D.Pa.)

**ERRATA SHEET RE DEPOSITION OF ROBERT BERLINER  
ON FEBRUARY 16, 2005**

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
8:18	“confidence” should be “covenants”	Correction/Clarification
18:16	“Sherry” should be “Sherrie”	Correction/Clarification
23:24	“weren’t” should be “were”	Correction/Clarification
23:25	“this” should be “these”	Correction/Clarification
29:17	delete “Young”	Correction/Clarification
29:18	“Adam Zack” should be “Adamczak”	Correction/Clarification
33:4	“affect” should be “effect”	Correction/Clarification
42:15	“offering” should be “operating”	Correction/Clarification
43:8-9	“in the proceeding” should be “and the preceding”	Correction/Clarification
44:19	“affect” should be “effect”	Correction/Clarification
45:17	“affect” should be “effect”	Correction/Clarification
46:9	“affect” should be “effect”	Correction/Clarification
46:24	“vesting” should be “investing”	Correction/Clarification
48:7	“affect” should be “effect”	Correction/Clarification
49:4	“affect” should be “effect”	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
49:22	“affect” should be “effect”	Correction/Clarification
60:8	“is” should be “it”	Correction/Clarification
70:19	“AICPA,” should be “AICPA	Correction/Clarification
70:22-23	“an AICPA, SOP 00-01” should be “an AICPA SOP, 00-01,”	Correction/Clarification
71:14	“00-1” should be “00-01”	Correction/Clarification
72:5-6	“in 00 in that 001” should be “that the 00 in 00-01”	Correction/Clarification
80:2	“order to submit a” should be “auditor submitted”	Correction/Clarification
89:19	“of” should be “from”	Correction/Clarification
103:17	“you used” should be “used”	Correction/Clarification
104:21	“you” should be “that”	Correction/Clarification
106:2	“the” should be “their”	Correction/Clarification
106:21-22	“the DVOG hospitals” should be “for the DVOG hospitals”	Correction/Clarification
106:24	“were” should be “were,”	Correction/Clarification
107:8	“accounts” should be “accounts.”	Correction/Clarification
107:8	“also” should be “Also,”	Correction/Clarification
109:2	“where when” should be “where”	Correction/Clarification
110:7	“a” should be “the”	Correction/Clarification
110:13	“date, that” should be “date. That”	Correction/Clarification
121:8	“I in” should be “I, in”	Correction/Clarification
121:9	“errors” should be “errors,”	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
121:10	“FIN 14” should be “FIN 14,”	Correction/Clarification
132:22	“Franz” should be “Laing”	Correction/Clarification
134:17	“if anything” should be “, if anything”	Correction/Clarification
135:4	“personal financial” should be “corporate support”	Correction/Clarification
136:10	“assets are limited” should be “assets limited”	Correction/Clarification
138:10	“impact” should be “in fact”	Correction/Clarification
139:2	“successful or cost effective” should be “successful.”	Correction/Clarification
139:7 139:7-12	“successful” should be “successful.” delete “and that” on line 7 and all of lines 8-12	Correction/Clarification
144:10	“reserves, in” should be “reserves. In”	Correction/Clarification
144:20	“fetter” should be “ferret”	Correction/Clarification
149:9	“Nickelberry” should be “Mickleberry”	Correction/Clarification
149:15	“release” should be “reclass”	Correction/Clarification
151:5	“responsibilities, otherwise” should be “responsibilities. Otherwise”	Correction/Clarification
151:6	“public, readers” should be “public? Readers”	Correction/Clarification
151:21	“Nickelberry” should be “Mickleberry”	Correction/Clarification
152:23	“management” should be “matter”	Correction/Clarification
156:7	“a client” should be “the client”	Correction/Clarification
156:12	“in a whole” should be “as a whole”	Correction/Clarification
160:20	“evaluate on” should be “evaluate”	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
169:23	"until which" should be "which"	Correction/Clarification
170:7	"to side" should be "top side"	Correction/Clarification
174:23-178:9	Add: "With the benefit of a review of Mr. Buettner's 'top-side analysis,' which was not provided to me during my deposition, and certain of his testimony, I agree that Mr. Buettner has testified that certain of the notes on the second page of that 'analysis' reflect the claimed impact of payment slowdowns and unapplied cash."	Correction/Clarification
176:8	"a reserve" should be "reserve"	Correction/Clarification
179:3	"grows" should be "gross"	Correction/Clarification
181:20	"finances" should be "financials"	Correction/Clarification
182:22	"assureds" should be "assurance"	Correction/Clarification
183:18	"property planned equipment" should be property, plant and equipment"	Correction/Clarification
184:8	"property planned equipment" should be property, plant and equipment"	Correction/Clarification
187:18-19	"further or for areas" should be "further errors"	Correction/Clarification
190:18	"statements" should be "misstatements"	Correction/Clarification
191:8	"going on development" should be "development going on"	Correction/Clarification
193:20	"liability, there" should be "liability? There"	Correction/Clarification
193:23	"and the fact that not only" should be "not only"	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
194:2	“so far” should be “so far,”	Correction/Clarification
194:3	“is to the” should be “and the”	Correction/Clarification
204:18-19	“trustee. Particularly since the trustees” should be “trustee, particularly since the trustee”	Correction/Clarification
208:21	“Ben Corbley” should be “Ben Korbly”	Correction/Clarification
208:22	“Sepelia and Staldard” should be “Cepelik and Stalder”	Correction/Clarification
209:15	“a restricted” should be “the restricted”	Correction/Clarification
210:7	“unrealized” should be “realized and unrealized”	Correction/Clarification
212:23	“still be” should be “still being”	Correction/Clarification
213:5	“are meaningful” should be “is meaningful”	Correction/Clarification
217:16-17	“construction and process” should be “construction in process”	Correction/Clarification
217:24	“instance” should be “interest”	Correction/Clarification
218:21	“amount and the 1996 amounts” should be “amounts and the 1996 amount”	Correction/Clarification
218:23-24	“required under the iron curtain method” should be “required, under the iron curtain method,”	Correction/Clarification
219:2	“correction,” should be “correction.”	Correction/Clarification
219:2	“AHERF instead I believe” should be “AHERF instead, I believe,”	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
219:3	"and on the DVOG piece" should be "and, on the DVOG piece,"	Correction/Clarification
219:4	"2 million credited to the bad debt reserve," should be "2 million, credited it to the bad debt reserve."	Correction/Clarification
219:5	"that's just wrong and required to me" should be "That's just wrong and required, to me,"	Correction/Clarification
219:12	"capitalize" should be "capitalized"	Correction/Clarification
220:4	"whatsoever, what" should be "whatsoever. What"	Correction/Clarification
220:6	"CRA reserves, what" should be "CRA reserves? What"	Correction/Clarification
220:7	"bad debt reserve, absolutely nothing" should be "bad debt reserve? Absolutely nothing."	Correction/Clarification
220:9	"what does it tell you, to me the years get wide" should be "what does it tell you? To me, the ears get wide,"	Correction/Clarification
220:13	"things, it looks" should be "things. It looks"	Correction/Clarification
220:16	"thing, it requires extended procedures, it even" should be "thing. It requires extended procedures. It even"	Correction/Clarification
220:17	"requires I think" should be "requires, I think,"	Correction/Clarification
220:20	"okay," should be ",okay,"	Correction/Clarification
220:24	"that that's okay, it's" should be "and that's okay." It's"	Correction/Clarification
224:11	"condition" should be "within"	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
224:24	“fortune” should be “portion”	Correction/Clarification
224:25	“be captured” should be “recapture”	Correction/Clarification
232:7	“were now false?” should be “were not false?”	Correction/Clarification
234:22-23	“material in the state that they exist?” should be “material misstatements that exist?”	Correction/Clarification
234:25	“too” should be “to”	Correction/Clarification
253:20	“unreportable conditions” should be “reportable conditions”	Correction/Clarification
254:20	“equipment” should be “equivalent”	Correction/Clarification
255:5	“was” should be “was,”	Correction/Clarification
285:19	“was” should be “with”	Correction/Clarification

A handwritten signature in black ink, appearing to read "Robert W. Berlin".

**Brenner Dep.**

**In The Matter Of:**

**AHERF v.  
PRICEWATERHOUSECOOPERS**

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**RALPH W. BRENNER**

*September 30, 2003*

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**LEGALINK MANHATTAN  
420 Lexington Avenue - Suite 2108  
New York, NY 10170  
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**BRENNER, RALPH W.**



**LEGALINK**

A WORDNLINE COMPANY

<p style="text-align: right;">Page 114</p> <p>1           Ralph W. Brenner, Esquire      2 didn't see you at the meeting or after the meeting I      3 never did get a chance to talk to you, but here are      4 my thoughts. But the real purpose of the discussion      5 was to make the pitch. I never wrote him back or      6 talked to him again I don't think.      7     Q. So did you tell him earlier that we didn't      8 receive timely and accurate financial information on      9 an ongoing basis and then he kind of put it back to      10 you?</p> <p>11        MS. MEADEN: Objection.</p> <p>12     A. I don't recall that.</p> <p>13     Q. You don't recall?</p> <p>14     A. I don't recall having said that. I can't      15 remember the man and I am troubled by what his      16 position was even on the audit committee. I don't      17 know whether he was there in some advisory sense or      18 whether he -- because I never attended the meetings,      19 I didn't get to meet all of these people, so I think      20 if I was there it was sort of after it, hi, I'm Cook      21 and there must have been some presentation and he      22 said I have some concerns and I probably said --      23 listened to him and said, yeah, there are some      24 concerns, but I didn't get into -- he was now, as I      25 see it, laying out his specific concerns, which I</p>	<p style="text-align: right;">Page 116</p> <p>1           Ralph W. Brenner, Esquire      2 A. Are you talking about integrity now, or are      3 you talking about judgment or -- your question was      4 integrity.      5     Q. My question was integrity.      6     A. And I said I don't have any reason to believe      7 that.      8     Q. Right. And then you --      9     A. I said I had questions about other aspects.      10    Q. Right. Those other aspects, ego, et      11 cetera --      12    A. I have no way of specifically knowing, but I      13 certainly had the sense that others questioned      14 certainly some of those traits. In other words, was      15 he too headstrong on some of these positions he was      16 taking and whether he was somehow as flexible as we      17 would have liked him to be.      18    Q. Do you recall any other trustees questioning      19 his integrity?      20    A. Certainly not before he was terminated. I      21 mean there may have been other people that knew      22 things that I didn't know. All I'm saying is I      23 don't recall anybody specifically saying that to me.      24    Q. Okay. I'm just here to get your      25 understanding.</p>
<p style="text-align: right;">Page 115</p> <p>1           Ralph W. Brenner, Esquire      2 don't know whether I shared or didn't share at that      3 point in time.      4     I did, as I said before, express some      5 concern myself as to the overall situation.      6     Q. Right. Okay.      7       Up until the time of Mr. Abdelhak's      8 termination, did you have confidence at all times in      9 his integrity?      10    A. Define for me the word "integrity."      11    Q. His honesty.      12    A. I had no reason to question his integrity. I      13 questioned his judgment. I questioned whether he      14 was -- I questioned his ego. I questioned whether      15 he was a man who had set a course and was unwilling      16 to deviate from it regardless of some of the      17 consequences, but I certainly don't think I had a      18 sense of distrust. Maybe I should have, but I      19 didn't. I don't think I did.      20    Q. When did you first have the feeling that you      21 questioned his ego, as you described it?      22    A. It is hard to put these things together. I      23 think it was before the Graduate situation.      24    Q. Do you know whether any other trustees had      25 the same kinds of concerns?</p>	<p style="text-align: right;">Page 117</p> <p>1           Ralph W. Brenner, Esquire      2 A. Yeah.      3     Q. What about Mr. McConnell; did you ever have      4 concerns about his integrity up until the time that      5 he was terminated?      6     A. Once again, I don't believe I had any      7 questions about his integrity; however, I had some      8 serious questions as to the accuracy of all of the      9 financial dealings that were being suggested in      10 connection with some of the transactions. I say      11 that recognizing that I am not an accountant. I      12 have already admitted to not being the guru in the      13 area of the financial world, but I do listen and I      14 do try and pay attention and I was somewhat      15 mystified by some of the suggestions of how some of      16 these transactions, particularly the latter ones,      17 maybe Graduate as much as any, were to come into      18 being.      19     Q. Can you remember anything specifically that      20 mystified you about that?      21     A. No, no, I just knew I sat there and said, you      22 know, I'm trying, but it's too complicated to work      23 in the way that they are suggesting.      24     Q. Just to finish the topic, do you know of      25 anyone else who had those same concerns on the</p>

<p>1                   Ralph W. Brenner, Esquire  2 board?  3   A. No.  4   Q. And do you know of anyone else who voiced a  5 concern about Mr. McConnell's integrity?  6   A. No.  7   Q. You mentioned that you don't recall --  8   A. I should say I can't remember specifics about  9 it, but I think there were some people who shared my  10 view not about the integrity, but about the  11 complicated mechanisms which were being suggested  12 for completing some of these transactions.  13   Q. Did you have any of those questions about the  14 Forbes acquisition?  15   A. You know, I don't remember much about the  16 Forbes transaction. My only recollection was that  17 one meeting that I had and I don't remember anything  18 else about that. I don't remember seeing any papers  19 on that Forbes transaction to be honest with you.  20   Q. Did you have those kinds of concerns about  21 the Hahnemann transaction?  22   A. Have any concerns about it?  23   Q. The kinds that you mentioned about the --  24   A. I don't think so.  25   Q. You mentioned earlier that you don't recall</p>	<p>Page 118</p> <p>1                   Ralph W. Brenner, Esquire  2 not-for-profit organization management?  3   MS. MEADEN: Objection as to foundation.  4   A. I certainly understand that the auditors must  5 rely on receiving the information necessary and to  6 learn and gain the information necessary from the  7 business people so that they can appropriately  8 conclude their audits, but I also think it is up to  9 them to press hard and, if they perceive any  10 irregularities or questionable practices, that they  11 should be called to the attention not only of the  12 management, but of the board.  13   Q. Are you aware at all of Mr. Abdelhak ever  14 having used any AHERF funds with respect to his  15 divorce?  16   A. No.  17   Q. While you were on the AHERF board of  18 trustees, did you ever have any concerns about the  19 number of people on the board, too many or too few?  20   A. No, I thought it was an appropriate number.  21 I don't remember what it was. I would be guessing.  22 25? Just guessing.  23   Q. Did you ever believe that sometimes the AHERF  24 board meetings didn't last long enough to get  25 through all the materials?</p>
<p>1                   Ralph W. Brenner, Esquire  2 ever speaking with Mr. Buettner at Coopers &amp;  3 Lybrand. Do you recall speaking or hearing --  4 speaking to or listening to anyone else from Coopers  5 &amp; Lybrand during the course of your time at AHERF?  6   A. No.  7   Q. What was your view, if any, while you were on  8 the audit committee of the role of an outside  9 auditor?  10   A. I viewed them as perhaps the most important  11 facet of supporting staff that a board member,  12 trustee, could have. It is in my judgment the  13 ultimate guardian of the financial management of the  14 enterprise and, while many of the board members  15 probably are sophisticated in handling financial  16 matters, many are not and therefore they look to the  17 auditors to bring to their attention any concerns,  18 any new procedures, any new materials which they may  19 have learned about so that the board can consider it  20 and react and make intelligent decisions as to how  21 to proceed. And I relied -- I always have relied  22 heavily on them, the auditors, in every position I  23 have ever been in.  24   Q. Did you understand that auditors in turn  25 relied on company management or, in this case,</p>	<p>Page 119</p> <p>1                   Ralph W. Brenner, Esquire  2 MS. MEADEN: Objection as to form.  3   A. You have to remember that I was new on the  4 board in eighty -- '93 or 4. I can't remember. It  5 was an old established board and going to Pittsburgh  6 with the board consisting of 90 percent of  7 long-established board members, one did not question  8 the operations which presumably had been in effect  9 for some period of time. That did not mean they  10 didn't question the items that came before us, but  11 in terms of the length of the board meetings, the  12 agenda for the board meetings and things like that,  13 certainly for the first couple of years it took a  14 while -- and, as I say, you could ask me now the  15 names of all those board members and I bet I  16 couldn't give you half of them, a quarter of them,  17 simply because I would -- you would attend a  18 meeting, fly out, spend an hour and a half maybe at  19 the meeting. If you wanted to get back to the  20 office, you didn't stay for lunch, so you went back  21 to the office. And so the meetings generally  22 covered the items that were on the agenda. They  23 certainly got longer as the problems got more  24 difficult.  25   Q. Let me show you a document that even though</p>

<p style="text-align: right;">Page 122</p> <p>1           Ralph W. Brenner, Esquire      2 it is not written on here I believe it has been      3 previously marked as Exhibit 1990, and, for the      4 record, this is the minutes from meeting of the      5 committee of trustees of AHERF dated October 10,      6 1997.</p> <p>7           Mr. Brenner, you are listed here as      8 attending via telephone conference. I don't think I      9 asked about this committee before. Do you remember      10 being on the committee of trustees?</p> <p>11          A. No. What did we do?</p> <p>12          Q. Well, let's see.</p> <p>13          A. Ah, yes. This is where he created what I was      14 trying to recall as the -- what is it? The eastern      15 region -- the Allegheny University Hospital's      16 eastern region, AUH. Remember you asked me if --</p> <p>17          Q. Uh-huh.</p> <p>18          A. It was at this point that he felt that there      19 were too many meetings I guess, too many duplication      20 of time and effort and so he was establishing some      21 new boards which I guess by the date of this, once      22 again, had very little, if any, activity. They met      23 -- I can recall just really one special meeting.      24 There were other meetings when they were talking      25 about the bankruptcy.</p>	<p style="text-align: right;">Page 124</p> <p>1           Ralph W. Brenner, Esquire      2 time required to attend the various governance      3 meetings as well as the duplication of presentations      4 and actions."</p> <p>5           Were you one of those trustees who      6 complained that he is referring to, do you know?</p> <p>7          A. I don't think --</p> <p>8          MS. MEADEN: Objection as to foundation      9 and form.</p> <p>10         THE WITNESS: I'm sorry.</p> <p>11          A. I don't think I complained to anybody, but I      12 was aware of that. I had suffered from that myself;      13 otherwise, I would have gone to some of the audit      14 meetings or I would have gone out to the Pittsburgh      15 board meetings, which I didn't attend. It was just      16 too much to do. And, once again, once you get into      17 this late '97 period, things are starting to stir up      18 a little bit and I think one of his reasons for      19 trying to distill this down was to try to reduce the      20 number of some of those meetings for a variety --      21 not only the trustees but his own management.</p> <p>22          Q. And why do you think that he would want to do      23 that?</p> <p>24          A. I would hope he would want to do it to try to      25 help the trustees and management or maybe he felt by</p>
<p style="text-align: right;">Page 123</p> <p>1           Ralph W. Brenner, Esquire      2 Q. "They" meaning AUH Eastern Region?      3          A. Right.      4          Q. And the "he" you are referring to is Mr.      5 Abdelhak?      6          A. I'm sorry?      7          Q. The "he" you are referring to, the "he" did      8 this, was Mr. Abdelhak?      9          A. Yes, he's the one who suggested this. Well,      10 it may have been with others. He may have consulted      11 others, I don't know, but he was the one who I      12 believe was given credit for the suggestion and I      13 can't believe this would have occurred without his      14 blessing.      15          Q. If you look on the second page of this      16 document under "Proposed Corporate Restructuring" --      17          A. Where is this?      18              MS. LANGER: Paragraph B.      19          A. Middle paragraph?      20          Q. Right. It says, "Mr. Abdelhak presented for      21 discussion a proposed governance restructuring. He      22 noted that as the AHERF system has grown, the size      23 and complexity of the governance structure has      24 increased exponentially. He further noted that      25 many trustees have complained about the amount of</p>	<p style="text-align: right;">Page 125</p> <p>1           Ralph W. Brenner, Esquire      2 the multitude of meetings he was not getting the      3 benefit of the help of the trustees who could not      4 participate in all of those events.</p> <p>5          Q. Did the changes in -- first of all, did these      6 changes actually take effect?</p> <p>7          A. Some of them he tried to take effect. As I      8 say, in my mind it is one of those sort of futile      9 let's try and do something. One of the -- you will      10 note here a question was raised as to whether the      11 women's hospital like St. Christopher's should have      12 a separate board and at the same time he wanted to      13 change the name of St. Christopher's to Allegheny      14 St. Christopher's. Every other hospital here was      15 Allegheny Graduate, Allegheny Hahnemann, Allegheny      16 -- everybody Allegheny, and I threatened to resign      17 from the board. I said it has to be St.      18 Christopher's. St. Christopher's is the name it is      19 known by. St. Christopher's has the reputation, and      20 if you are going to change that name, you are in      21 effect changing what I believe to be one of the      22 assets of this, and he backed off. But it was      23 during this period that he was making a variety of      24 changes like this.</p> <p>25          Q. In your view did these changes, the ones that</p>

<p>1                   Ralph W. Brenner, Esquire  2 of the board?  3     A. Well, they certainly had the titles.  4     Q. What do you mean by that?  5     A. Well, you know, president of U.S. Steel,  6 president of a bank, president of Westinghouse.  7 There were a whole bunch of very significant titles  8 of people and many of them were, you know, highly  9 respected, certainly one would think -- I considered  10 it an honor to be able to be with that board and I  11 certainly believed that it was -- they were being  12 generous in letting me join a very well thought of  13 organization.</p> <p>14   I mean when I joined, it was -- there  15 were plaudits around Philadelphia that I would have  16 been asked to join the board and it was a very nice  17 thing to have happen and, as I say, it gave me an  18 opportunity to do something for St. Chris in an area  19 where it would be difficult to penetrate a huge  20 organization.</p> <p>21   Q. Did you have a view when you joined that  22 board as to the sort of collective business acumen  23 that the members of the board had?</p> <p>24   A. Very hard to judge that because so much of it  25 is -- you know, I had a limited expertise in areas</p>	<p>Page 158</p> <p>1                   Ralph W. Brenner, Esquire  2     A. Yeah, I think so.  3     Q. And how is it that that played a factor in  4 your decision to join the AHERF board?  5     A. Well, I certainly looked at some of the  6 annuals. I was provided I think with some early  7 background materials which I asked for, and amongst  8 those were the statements of recognition that  9 Coopers &amp; Lybrand were doing it and obviously that  10 was a comforting thought because I thought I know  11 how they operate.</p> <p>12   Q. Earlier Mr. Friesen asked you about what your  13 view of the role outside auditors play in an entity  14 and you said something to the effect that they are  15 the ultimate guardian of the financial management?  16     MR. FRIESEN: Objection.</p> <p>17     A. They are the ultimate guardian -- I thought I  18 said they were the ultimate guardian in the eyes of  19 the board of the management of the financial affairs  20 of the corporation simply because they are an  21 independent force who are looking at the numbers.  22 True, we had responsibility for those, but heavy  23 reliance would be upon the accountants, who we are  24 much more experienced and sophisticated and  25 knowledgeable, particularly when they are</p>
<p>Page 159</p> <p>1                   Ralph W. Brenner, Esquire  2 and if you were to ask any of those board members,  3 they would probably say the same thing about me. He  4 probably knows something in the legal area but  5 clearly what does he know about a new fiduciary  6 arrangement of some sort?</p> <p>7   Q. At the time that you joined the board, were  8 you aware that Coopers &amp; Lybrand were the outside  9 auditors for AHERF?</p> <p>10   A. I certainly did.</p> <p>11   Q. And how is it that you became aware of that?</p> <p>12   A. They were a factor in my joining the board.</p> <p>13   Q. Could you explain to me how?</p> <p>14   A. In the days before Allegheny came up, St.  15 Christopher's decided that it needed new auditors,  16 and I, along with other members of my board and  17 management, interviewed virtually every substantial  18 accounting firm certainly in the city and that was  19 all the big ones and decided conclusively that the  20 most talented and the most experienced in hospital  21 management area was Coopers &amp; Lybrand and so we  22 hired them and I interviewed Ernst &amp; Ernst, you name  23 them, Touche Ross, did them all.</p> <p>24   Q. And you hired the Philadelphia office of  25 Coopers &amp; Lybrand for St. Christopher's?</p>	<p>Page 161</p> <p>1                   Ralph W. Brenner, Esquire  2 experienced in the hospital field. And so -- on the  3 account side. So I think obviously we all tried to  4 do as much as we could, but if one of our business  5 people would say something and we questioned it, we  6 would always try and ask, you know, "Was this run by  7 the accountants?" I always asked that question.</p> <p>8   Q. At AHERF you are saying?</p> <p>9   A. Yeah.</p> <p>10   Q. And what was the response to that question  11 when you asked it?</p> <p>12   A. Sometimes yes; sometimes no.</p> <p>13   Q. And if it was sometimes no, did you request  14 that they then run it by the accountants?</p> <p>15   A. Well, maybe I would say -- I'm not sure.  16 Maybe I would say maybe "You ought to have them look  17 at it," and whether they did or didn't, I don't  18 know.</p> <p>19   Q. And why do you place reliance on the fact  20 that they were an independent force, "they" being  21 the outside auditors?</p> <p>22     MR. FRIESEN: Objection.</p> <p>23   Q. What comfort did that give you?</p> <p>24     MR. FRIESEN: Objection.</p> <p>25   A. Well, management obviously is always charged</p>

<p>1           Ralph W. Brenner, Esquire      2 with trying to achieve the highest results and in so      3 doing sometimes are prone to be a little less      4 careful than they should be. Board members likewise      5 are sometimes a little less knowledgeable and a      6 little less careful in the review of the materials      7 that are provided to them. And thus, if they are      8 busy and they don't really get a chance to look at      9 them, if something comes in and says it has been      10 approved by the accountants, that gets you off the      11 hook, and so both in terms of how -- whether      12 management was on stream or whether the numbers were      13 on stream, so I think you look very carefully to      14 that. It has to be some backdrop of reliance which      15 you can have which takes you outside the people who      16 are actually participating in the benefit and who      17 may not have the knowledge and that I view as the      18 board and management and we both make mistakes.      19       Q. At any time during your tenure on the AHERF      20 board, did the outside auditors ever indicate that      21 there was any question about the accuracy or the      22 fairness of the representations of the numbers that      23 were contained within AHERF's financial statements?      24       MR. FRIESEN: Objection.      25       A. I don't recall, but they may have already</p>	<p>Page 162</p> <p>1           Ralph W. Brenner, Esquire      2 particular expertise in some people who were most      3 experienced in this area and it was clear not only      4 to myself but to Miles Turtz, Tony Gigliotti and      5 others who were on the board at that time that      6 Coopers were the best.      7       Q. Do you recall generally speaking when it was      8 that you interviewed Coopers &amp; Lybrand in connection      9 with St. Christopher's outside auditing needs?      10      A. Probably in the early '80s.      11      Q. Early '80s.      12           You also responded to Mr. Friesen's      13 question about the role that outside auditors played      14 in your mind by stating that you believed it was up      15 to the outside auditors to press hard and to bring      16 questions regarding practices not only to management      17 but to the board?      18      A. Correct.      19      Q. That's correct?      20      A. Yeah.      21           Q. And what types of things in that regard did      22 you expect the outside auditors to bring to the      23 board of AHERF?      24      A. Well, I think -- and, as I say, the one      25 example that I have is that -- and I am so getting</p>
<p>1           Ralph W. Brenner, Esquire      2 given that information to the management and changes      3 may have been made before those documents were      4 ultimately seen by the board.      5       Q. But you as a board member --      6      A. No.      7       Q. -- have no recollection --      8      A. No.      9       Q. -- of ever hearing that from the outside      10 auditors, correct?      11      A. No.      12      Q. No, I'm not correct?      13      A. No, I never heard from them.      14      Q. Just to make sure we're clear.      15           Did you have an understanding that      16 Coopers &amp; Lybrand had some expertise in auditing      17 healthcare entities?      18      A. They certainly did when I interviewed them.      19      And they were clearly the superior accounting firm      20 in this area.      21      Q. In this area --      22      A. And they were not a client of mine or this      23 firm. We independently looked at all of them. In      24 fact, we have represented a number of the big      25 accounting firms, but we were looking for a</p>	<p>Page 163</p> <p>1           Ralph W. Brenner, Esquire      2 stupid that I can't remember the name of that.      3 There is a procedure that goes through when the      4 accountants, before they issue their final audit,      5 and the management get together. It is not the      6 management letter, but they discuss suggested      7 changes to either the auditing procedures or some of      8 the -- whether there are -- certain things are be      9 accurately reflected back and forth and there are      10 discussions and those matters are usually resolved      11 between the two parties and ultimately the audited      12 statements come out, and what I was alluding to when      13 I made that comment was that to the extent that the      14 accountants see anything which they view as      15 potentially a problem, might be considered a problem      16 if read later on, anything like -- even if it's a      17 nit, and some of them were nits, you ought to be      18 selling -- you ought to put the name of three      19 officers at the end of this thing instead of one,      20 that ought to be raised and they are obviously      21 skilled in knowing what is appropriate and what      22 changes should be made and my recollection was that      23 they were made. And this discussion that I had on      24 the phone during that board meeting related to those      25 kinds of things. It had nothing to do with anything</p>

<p style="text-align: right;">Page 166</p> <p>1           Ralph W. Brenner, Esquire      2 like, okay, there is something hanky-panky going on      3 anywhere. It was solely related to the kinds of      4 cosmetic things which should be achieved and agreed      5 upon by the client and the accounting firm.      6       Q. Well, if Coopers &amp; Lybrand had found material      7 misstatements in the financial statements that were      8 presented to them by AHERF management for audit,      9 would you have expected Coopers &amp; Lybrand to bring      10 that to the attention of the AHERF board?      11       MR. FRIESEN: Objection. Calls for      12 speculation.      13       A. Any semblance of concern in that area I would      14 ask for an intensive further investigation and      15 documentation before any further discussion was held      16 of that.      17       Q. But my question really is more preliminary      18 than that, which is would you have expected them to      19 bring it to the attention of the board in the first      20 place?      21       MR. FRIESEN: Objection.      22       A. Yes, I would.      23       Q. And if Coopers &amp; Lybrand had found      24 intentional misstatements in the financial      25 statements that were presented to them for audit,</p>	<p style="text-align: right;">Page 168</p> <p>1           Ralph W. Brenner, Esquire      2       A. Well, I would expect them at least to bring      3 it to the attention of the chief executive officer      4 first before -- and ultimately, if there was a      5 problem, then it probably should go to the board.      6       Q. Mr. Brenner, could you bring your --      7           VIDEO TECHNICIAN: Your hands are      8 blocking the microphone, Mr. Brenner.      9       Q. And if Coopers &amp; Lybrand had found during the      10 course of their audit of AHERF's financial      11 statements something that caused them to question      12 the integrity of AHERF's financial management, would      13 you have expected Coopers &amp; Lybrand to bring that to      14 the attention of the board?      15       MR. FRIESEN: Objection.      16       A. Once again, I would expect them to -- there      17 is the audit committee and I would expect them to      18 bring it to the audit committee and probably to the      19 chief executive officer.      20       Q. The audit committee is made up of board      21 members though, correct?      22       A. Yes, and I don't know if there were any      23 financial people on there from AHERF. I don't know.      24       Q. You mean inside directors?      25       A. Yeah.</p>
<p style="text-align: right;">Page 167</p> <p>1           Ralph W. Brenner, Esquire      2 would you have expected them, "them" being Coopers &amp;      3 Lybrand --      4       A. Recognizing this is a hypothetical, yes, I      5 would.      6       Q. -- to the committee?      7       MR. FRIESEN: I have to get an objection      8 in there somewhere.      9       Q. I have to get a question in there somewhere,      10 so if you could wait until I finish my question      11 completely and then we will give Jeff the      12 opportunity to object and then you can answer it.      13       But my question is, would you have      14 expected Coopers &amp; Lybrand to bring their suspicions      15 of intentional misstatements, if they had found some      16 during their audit, to the attention of the board?      17       MR. FRIESEN: Objection.      18       A. Yes.      19       Q. And if you -- would you have expected that      20 Coopers &amp; Lybrand, if it had concerns about the      21 competency of financial management as uncovered      22 during their audit of the financial statements,      23 would you have expected them to bring that to the      24 attention of the board?      25       MR. FRIESEN: Objection.</p>	<p style="text-align: right;">Page 169</p> <p>1           Ralph W. Brenner, Esquire      2       Q. And if Coopers &amp; Lybrand had uncovered      3 something that indicated fraudulent conduct on the      4 part of AHERF's financial management during the      5 course of their audits, would you have expected      6 Coopers &amp; Lybrand to bring that to the attention of      7 the audit committee or the board?      8       MR. FRIESEN: Objection.      9       A. I would.      10       Q. Do you have an understanding of what the term      11 "clean opinion" means with respect to financial      12 statements?      13       A. I've heard of it and I'm not certain      14 precisely what that may mean today in terms of a      15 clean opinion. If somebody gives it, I guess it's      16 the auditors.      17       Q. Well, let me ask it this way: Was it your      18 understanding that a clean opinion was an opinion      19 from the outside auditors stating that their audit      20 revealed that the financial statements were fairly      21 and accurately presented?      22       MR. FRIESEN: Objection.      23       A. Now what's the question?      24       Q. My question is, was that your understanding      25 of what a clean opinion from an auditor is?</p>

<p>1           Ralph W. Brenner, Esquire 2           MR. FRIESEN: Objection. 3       A. Well, I didn't have an understanding. 4       Q. Okay. 5       A. I had heard of the term and I am assuming 6       that it meant a clean opinion from somebody, 7       presumably the auditors, as to the financial records 8       of the company. 9       Q. Did you have any understanding as to what the 10      term "adverse opinion" means with respect to audited 11      financial statements? 12      A. No. 13      Q. Now, if Coopers &amp; Lybrand had come to the 14      audit committee or the board of which you were a 15      member and indicated that the fiscal year 1996 or 16      1997 financial statements that had been presented to 17      them for audit had been intentionally misstated by 18      management, would that have concerned you? 19      MR. FRIESEN: Objection. 20      A. Obviously it's a hypothetical as far as I'm 21      concerned because I had no knowledge of that. 22      Obviously I -- it goes back to any irregularity. My 23      expectation would be that we would hear about it. 24      Q. And if you had in fact heard about it, you 25      would have been concerned about that, right?</p>	<p>Page 170</p> <p>1           Ralph W. Brenner, Esquire 2       the results of the investigation were presented to 3       you, you would have had various options as to what 4       course of action to take, correct? 5       MR. FRIESEN: Objection. 6       A. Or one being no action. 7       Q. That's right. 8       A. Obviously you can do an investigation and you 9       make a determination as to the authenticity or 10      credibility of the alleged activity. 11      Q. And if you found that the auditors were 12      mistaken, you may decide that you would want to get 13      a new audit team in there, correct? 14      A. That's one option. 15      Q. And another option would be if the 16      investigation found that the auditors were correct, 17      you might have asked them to expand the scope of 18      their audit, correct? 19      A. Correct. 20      Q. Or you might have decided to fire management, 21      correct? 22      MR. FRIESEN: Objection. 23      A. You can do a variety and many other things. 24      Q. And you would have -- you personally as a 25      board member would have followed whatever prudent</p>
<p>1           Ralph W. Brenner, Esquire 2       A. If I had heard about it, I would have 3       embarked on an intensive investigation immediately 4       asking the company to do that. 5       Q. It wouldn't have been something that you 6       would have ignored, correct? 7       A. Absolutely not. 8       Q. And you would have asked -- I'm sorry -- you 9       said management to embark on an investigation? 10      A. Yeah, I would have asked them to investigate 11      immediately, get from the auditors precisely all the 12      information that they had so that we had an 13      opportunity to view that and make a judgment 14      ourselves as to whether or not there was indeed the 15      kind of irregularity they were alluding to. 16      Q. And once that investigation was completed and 17      the results were presented to you, you would have 18      had various options -- 19      A. To act in some way. 20      Q. Right. 21      MR. FRIESEN: Did you finish? 22      Q. You would have had various -- let me back up 23      and we will start again to just make sure I get a 24      clean record here. 25      Once the investigation was completed and</p>	<p>Page 171</p> <p>1           Ralph W. Brenner, Esquire 2       course you thought the investigation led you to, 3       correct? 4       A. Absolutely. 5       Q. Do you have any understanding as to what 6       generally accepted accounting principles are or 7       GAAP? 8       A. Yeah, about, yeah. I mean I'm aware of them 9       and I -- they keep changing. 10      Q. Right. And tell me what your understanding 11      of GAAP is. 12      A. I cannot articulate what they are, but I am 13      aware generally of those principles. 14      Q. Right, and I'm not asking you for specifics 15      of what the GAAP principles are. 16      A. Well, I already told you I didn't know, so 17      feel free to ask. 18      Q. I would just like to know what your general 19      understanding is as to what those principles are. 20      A. Yes, I understand that there is through the 21      accounting industry a very carefully crafted set of 22      regulations and rules with respect to appropriate 23      accounting procedures, and those are, I think, 24      publicized and are available to all financial 25      interested persons.</p>